IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.1725 OF 2006

Mrs. Manju G. Agarwal .. ..Petitioner

Versus

Shri Atmaram M. BNhageria & Ors. ..Respondents

Mr.Bharat C.Gandhi i/b K.G.Pandey for petitioner

Mr.P.A.Pol, APP for State

CORAM : D.B.BHOSALE, J.

DATE : 14TH AUGUST, 2006.

1. By this writ petition the petitioner has impugned the Order dated 27th July 2006 passed by the Sessions Court in Revision Application No.749 of 2006. By that order the Revision, against the order "issue process" passed by the Metropolitan Magistrate in 2000, came to be dismissed. The learned counsel for the petitioner wanted this court to examine the defence of the petitioner as against the presumption of law available under Section

139 of the Negotiable Instruments Act and for that purpose he placed reliance on the judgment of this court in the case of **Hiten Sagar & Anr. vs. IMC Ltd., 2001 Cr.L.J. 4311**. In my view that judgment is of no avail to the petitioner. The order of issuance of process is based on the averments in the complaint and the documents annexed thereto which have presumptive nature in law. Presumption of law could be rebutted during trial. In the present case, I am informed that the complainant has already filed affidavit in lieu of examination in chief and the case has now been adjourned for cross examination by the petitioner. It is open for the petitioner to rebut the presumption during trial and for that purpose, all the contentions raised in this petition are kept open. With these observations the writ petition is disposed of. The trial is expedited.

(D.B.Bhosale, J.)